

**KEKER
VAN NEST
& PETERS**

LATHAM & WATKINS LLP

MORRISON FOERSTER

August 11, 2025

VIA ECF

Hon. Ona T. Wang
U.S. Magistrate Judge for the Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

RE: *In re OpenAI, Inc. Copyright Infringement Litigation*, No. 1:25-md-03143, This document relates to all actions

Dear Judge Wang:

OpenAI does not oppose Plaintiffs¹ request to be included in the upcoming settlement conference to occur on Friday, August 15, 2025. *See* ECF 434.

However, OpenAI understands that the purpose of the settlement conference is to “discuss the parties’ preserved data sampling protocol,” *see* ECF 444, which the Court requested to “aid in [its] Rule 37(e) analysis,” ECF 217. As such, the goal of the conference should be to resolve any remaining issues relating to that analysis, so that the parties can begin running searches on the ChatGPT consumer data that OpenAI has preserved pursuant to the Court’s May 13 Preservation Order. ECF 33. This is a critical step to resolving the preservation dispute between OpenAI and the News Plaintiffs “quickly” so that the Preservation Order may be vacated to mitigate the ongoing harm to OpenAI’s users. 06.25.2025 Transcript 287:14–16, 291:2. OpenAI hopes that the parties can focus on that goal rather than delving into the unrelated issues discussed in Plaintiffs’ letter. *See* ECF 434 (arguing that OpenAI’s API classifier data is “relevant to Class Plaintiffs’ output claims,” to “fair use,” and to “*scienter* for purposes of The Intercept’s and Ziff Davis’s DMCA claims”).²

During the parties’ conferral on Monday morning, Plaintiffs confirmed that their intent in joining the upcoming conference is to monitor these negotiations and not actively participate in them, introduce new issues nor advance their own demands with respect to the preserved data. Subject to that confirmation, OpenAI does not oppose Plaintiffs’ request to be included in the confidential conference.

¹ “Plaintiffs” refers to Class Plaintiffs, Ziff Davis, and The Intercept. *See* ECF 434.

² OpenAI also notes that the Class Plaintiffs’ output claims are the subject of a pending motion to dismiss. *See* ECF 325 at 2 (relevant complaint “does not attach or even quote a single sentence from any allegedly infringing output; nor does it provide any meaningful description of what the outputs contain, much less how their contents are substantially similar to any protected expression in Plaintiffs’ works”).

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Respectfully submitted,

KEKER, VAN NEST &
PETERS LLP

/s/ Ryan K. Wong
Ryan K. Wong*

LATHAM & WATKINS LLP MORRISON &
FOERSTER LLP

/s/ Luke Budiardjo
Luke Budiardjo

/s/ Rose S. Lee
Rose S. Lee*

cc: All Counsel of Record (via ECF)